

1 DAVID BURCHARD
2 CHAPTER 13 TRUSTEE
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7 UNITED STATES BANKRUPTCY COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SANTA ROSA DIVISION

10 In re:) Case No.: 10-1-2098AJ13
11) Chapter 13
12)
13 AURA MARINA ALFONSO) EX-PARTE APPLICATION FOR ORDER
14) AUTHORIZING THE CHAPTER 13 TRUSTEE
15) TO MAKE ADEQUATE PROTECTION
16) PAYMENTS

17 David Burchard, Chapter 13 Trustee in the above referenced matter, makes this Ex-Parte
18 Application for an Order directing the Chapter 13 Trustee to make the adequate protection payments
19 proposed by the debtor(s) plan. In support of this application the trustee represents;

20 (1) That 11 U.S.C. 1326(A) (1) (C) requires the debtor to commence making payments that
21 provide adequate protection directly to a creditor holding an allowed claim secured by personal
22 property to the extent the claim is attributable to the purchase of such property by the debtor for that
23 portion of the obligation that became due after the order for relief, and reducing the payments to the
24 trustee by such payments.

25 (2) 11 U.S.C. 1326(a) (1) provides that the court may order otherwise.

26 (3) That the debtor(s) do not know whether an allowed claim has been filed and thus the
27 debtor(s) do not know when to begin such adequate protection payments.

28 (4) That the trustee cannot reduce the claim of the creditor by the adequate protection
payments when the payments are made directly without an objection to such claim.

1 (5) That administratively the payment of adequate protection payments by the trustee would
2 be in the best interest of the debtor(s) and the creditors.

3 **WHEREFORE**, the Chapter 13 Trustee requests the court enter an order as follows:

- 4 1. Adequate protection payments required by 11 U.S.C. 1326(a)(1)(C) and the proposed plan
5 shall be paid by the trustee not the debtor.
- 6 2. Adequate protection payments required by 11 U.S.C. 1326(a)(1)(B) and the proposed plan
7 shall be paid by the debtor directly to the lessor, reducing the debtor(s) plan payment by that
8 amount so paid and providing the trustee with evidence of such payment including the amount
9 and date of payment.
- 10 3. Adequate protection payments pursuant to 11 U.S.C. 1326 (a)(1)(C) and the proposed plan
11 shall be paid when the claim holder has filed a proof of claim. To the extent funds are available
12 the trustee shall pay the claim holder adequate protection payments for those periods from the
13 filing of the petition through the date of confirmation.
- 14 4. The trustee shall begin making the adequate protection payments in connection with the
15 trustee's customary month end disbursement cycle beginning the month after the petition is
16 filed.
- 17 5. The trustee may access an administrative fee for making the payments required by this order
18 and shall collect such fee at the time of making the payment from the funds on hand in the
19 case. The allowed fee shall be equal to the percentage fee established by the Attorney general
20 pursuant to 28 U.S.C. 586(e)(1)(B) in effect at the time of the distribution.
- 21 6. Upon dismissal or conversion prior to confirmation of the plan, the trustee shall first make the
22 payments required by paragraph 1 above, then any unpaid claims allowed pursuant to section
23 503(b), before returning the balance of the funds held by the trustee to the debtor.
- 24 7. The trustee shall serve the creditors receiving adequate protection payments with the order on
25 Chapter 13 Adequate Protection Payments.
- 26 8. On appropriate motion any party may, either ex-parte or on noticed motion, request this order
27 be modified by the court.

28 Dated: June 10, 2010

Respectfully submitted,

David Burchard
David Burchard
Chapter 13 Trustee

1
2 **CHAPTER 13 TRUSTEE**
3 **P.O. BOX 8059**
4 **FOSTER CITY, CA 94404**

5 **PROOF OF SERVICE BY MAIL**

6
7 STATE OF CALIFORNIA, COUNTY OF **SAN MATEO**

8 I am employed in the County of **San Mateo**, State of California. I am over the age of 18 and not a
9 party to the within action. My business address is P.O. Box 8059, Foster City, CA 94404.

10 On June 10, 2010, I served the foregoing documents described as: **Ex-parte Application FOR**
11 **ORDER AUTHORIZING THE CHAPTER 13 TRUSTEE TO MAKE ADEQUATE PROTECTION**
12 **PAYMENTS**

13 I served the above documents on the interested parties by placing a true copy thereof in a sealed
14 envelope with the Trusteeship's mail room personnel for affixing a fully prepaid postage and mailing in
15 the United States mail at Foster City, California in accordance with the Trusteeship's ordinary
16 practices, addressed as set forth below:

17 **BMW**
18 **5550 Britton Parkway**
19 **Hilliard, OH 43026-7456**

20 I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge
21 and belief.

22 Executed on June 10, 2010, at Foster City, California.

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27
28
DENIZ BRIDGMAN_____
DENIZ BRIDGMAN